COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Verizon New England, Inc. d/b/a Verizon Massachusetts For Arbitration of Interconnection Agreements between Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as amended, and the Triennial Review Order	D.T.E. 04-33

MCI'S PARTIAL OPPOSITION TO MOTION OF VERIZON MASSACHUSETTS TO HOLD PROCEEDING IN ABEYANCE UNTIL JUNE 15, 2004

On February 20, 2004, Verizon New England, Inc. ("Verizon") filed a petition for arbitration with the Department seeking arbitration of unresolved issues associated with its proposal to amend its interconnection agreement with MCI and other CLECs and CMRS providers in Massachusetts to implement changes in law resulting from the FCC's *Triennial Review Order* ("*TRO*"). Portions of the new FCC rules adopted in the *TRO* were vacated on March 2, 2004 by the U.S. Court of Appeals for the D.C. Circuit in *USTA II*. Verizon now seeks to put this arbitration "on hold" while negotiations between Verizon and CLECs with respect to the vacated and remanded portions of the *TRO* take place. These negotiations were requested by the FCC and have been facilitated by the extension of the D.C. Circuit's issuance of the Court's mandate in *USTA II* until June 15, 2004.

MCI opposes Verizon's request with respect to issues that are ripe for arbitration. First, as Verizon has acknowledged, several changes of law are ripe for arbitration, notwithstanding the *USTA II* decision. These changes should be incorporated into CLEC

interconnection agreements as expeditiously as possible. The *USTA II* Court's remand of some of the *TRO* rules back to the FCC and the attempt by the industry to resolve these issues in commercial negotiations does not alter the fact that other *TRO* provisions create obligations and confer rights that must and should be implemented without regard to the uncertain status of other portions of the *TRO*. For example, issues relating to the conversion of services to UNEs and the commingling of access and UNE traffic are not affected by the ongoing commercial negotiations. Yet, under Verizon's proposal, MCI and other CLECs will be denied the benefits of those new FCC rules until later than they otherwise would have on account of the extension of the *USTA II* mandate and negotiations over the future pricing of unbundled local switching for mass market customers.

As noted above, MCI's opposition to Verizon's motion pertains only to those TRO issues that are <u>not</u> impacted by the *USTA II* decision, and which can be immediately incorporated into amendments to existing interconnection agreements. With respect to those TRO issues that are impacted by the *USTA II* decision, including the availability of switching (UNE-P) and transport as UNEs,[1] MCI urges the Department not simply to hold this arbitration in abeyance, but also to order Verizon to continue to honor all of its obligations surrounding those issues in its existing interconnection agreements until all issues affecting Verizon's obligations are addressed and resolved in this arbitration. Stated differently, the Department should order Verizon to continue to provide switching and transport as UNEs, under existing rates, terms and conditions, until all issues surrounding Verizon's obligations are resolved by the Department in this proceeding.

[1] To the extent that Verizon argues that hi-cap loop rules are vacated by *USTAII*, any changes to such rules would need to be addressed via the interconnection agreements change of law provisions and dealt with in this proceeding.

By filing this global TRO arbitration, Verizon acknowledges that its obligation to provide unbundled local switching (including UNE-P), transport and other UNEs at rates consistent with Section 252(d) of the Telecommunications Act are governed by its interconnection agreements with CLECs. Verizon further acknowledges by the filing of this arbitration that its obligations in CLEC interconnection agreements continue unless and until those interconnection agreements are amended pursuant to the change of law provisions. Thus, should the *USTA II* decision become effective on June 15 or some other date, it is clear that this global arbitration, initiated by Verizon, is the appropriate proceeding to resolve all issues surrounding the impact of that decision on Verizon's obligations to provide UNEs including switching and transport under existing interconnection agreements. Until all of those issues are resolved by the Department, Verizon should be ordered to continue to provide cost-based UNEs including switching and transport until further order of the Department.

Moreover, even if *USTA II* takes effect on June 15, 2004 and the TRO no longer obligates Verizon to provide cost-based UNE switching and UNE-P to competitors, there would still be no flash cut to a regime in which it has no obligation to provide switching or transport as UNEs. Instead, and until the FCC adopts either interim or permanent rules, there are independent sources of authority -- interconnection agreements, merger commitments and state law -- by which Verizon would still be required to provide cost-based switching and transport.

Verizon suggests that the delay in this proceeding is warranted to allow the parties to conserve resources and to avoid "the distraction of simultaneous litigation." These justifications for delay are quite disingenuous. First, Verizon has to date declined to

participate in open, mediated negotiations with MCI and other CLECs, so it is hard to fathom how Verizon is unable to find the resources needed to conduct this arbitration. Second, simultaneous litigation has been the rule, not the exception, since passage of the Telecommunications Act of 1996, with countless cost cases, arbitrations, section 271 proceedings, PAP dockets, etc. all going on at the same time across multiple jurisdictions. MCI is ready and able to cope with "simultaneous litigation;" Verizon's reticence to do so has, we are sure, nothing to do with the availability of resources.

MCI will withdraw its partial opposition to Verizon's motion if Verizon agrees to separately negotiate and file for approval interconnection agreement amendments that give immediate effect to the conversion and commingling provisions of the proposed TRO Amendment. In the alternative, MCI will withdraw its opposition to Verizon's motion if Verizon agrees to begin charging MCI UNE loop rates for special access circuits that are currently combined with special access multiplexers as well as future orders for such arrangements..

In summary, the Department should deny Verizon's motion to hold this proceeding in abeyance with respect to issues that are not affected by *USTAII* and are ripe for arbitration. In addition, the Department should exercise authority in this proceeding to require Verizon to continue to provide unbundled local switching and transport at existing rates, terms and conditions, as set forth in CLEC interconnection agreements. The Department should not permit the potential vacatur of portions of the TRO affect the ability of Massachusetts consumers to have an effective choice of local service providers.

MCIMETRO ACCESS TRANSMISSION SERVICES LLC, BROOKS FIBER COMMUNICATIONS OF MASSACHUSETTS, INC., MCI WORLDCOM COMMUNICATIONS, INC., MCI WORLDCOM COMMUNICATIONS, INC. AS SUCCESSOR TO RHYTHMS LINKS INC., AND INTERMEDIA COMMUNICATIONS, INC.

By:_____

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